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March 8, 2013

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

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Re: Corona Mine, Napa County, California; Unpermitted Discharges to Kidd Creek
Notice of Violations and Intent to File Suit for Violations of the Clean Water Act

This letter is submitted on behalf of James Creek Valley Land Company, LLC ("JCVLC") and Peggy Dickson to provide notice of ongoing violations of the Clean Water Act at the Corona Mine, in Napa County, California, located on properties owned and operated by the Corona/Twin Peaks Historical Association, LLC (hereafter "CTPHA" or "Discharger"). JCVLC and Ms. Dickson are owners of real property located downstream of Corona Mine properties and have been, and continue to be, adversely impacted by the Clean Water Act violations described herein. This notice is provided pursuant to Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b) and 40 C.F.R. § 136.5.

The Clean Water Act violations that are the subject of this notice are CTPHA's ongoing unpermitted and untreated discharges of acid mine drainage from a mine adit known as the Corona Drainage Tunnel Portal or the Lower Corona Mine Adit (hereafter "Corona Mine Adit")

to the surface waters of Kidd Creek, a tributary of James Creek. CTPHA's discharges of acid mine drainage from the Corona Mine Adit violate applicable water quality objectives adopted by the California Central Valley Regional Water Quality Control Board, as identified below, constitute a nuisance and an imminent and substantial endangerment to human health and the environment, and impair the beneficial uses of Kidd Creek and James Creek.

Factual Background

The Corona Mine is an inactive mercury mine located on properties owned and operated by the Discharger in northern Napa County. The Corona Mine Adit is located on Napa County Assessor's Parcel Number ("APN") 016-020-026.

The Corona Mine Adit was created by miners to drain water from the upper Corona Mine directly into Kidd Creek. The rate of discharge of acid mine drainage from the Corona Mine Adit varies seasonally and with rain events, with generally higher flows in the spring and lower flows in the summer and fall. The estimated flow rates of the unpermitted acid mine drainage discharge from the Corona Mine Adit range from about 35 gallons per minute ("gpm") to 150 gpm, or from about 50,000 gallons per day ("gpd") to 216,000 gallons per day. Kidd Creek is an intermittent stream above the Corona Mine Adit, and the unpermitted discharge of acid mine drainage from the Corona Mine Adit is the principal source of water to lower Kidd Creek during the summer dry season.

The Corona Mine Adit discharges partially oxidized acid drainage that contains elevated concentrations of certain heavy metals, including but not limited to, iron, nickel, chromium, and zinc. The Corona Mine Adit discharge turns the clear, colorless waters of Kidd Creek orange, as shown in Exhibit A attached hereto, which is a photograph of Kidd Creek taken on March 2, 2013, immediately downstream from the Corona Mine Adit discharge. This distinctive orange color from the Corona Mine Adit discharge at times extends downstream to the waters of James Creek, approximately 2,000 feet downstream from the Corona Mine Adit, below the confluence of Kidd Creek and Bateman Creek. Moreover, pools in Kidd Creek below the Corona Mine Adit are coated with orange iron oxide and iron sulphate precipitates that form as the acid mine drainage oxidizes and acidifies. The acid mine discharge and mineral precipitates are toxic to aquatic organisms, constitute a nuisance, and impair the beneficial uses of Kidd Creek and James Creek.

The State Water Resources Control Board has listed James Creek as impaired water body under Section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d), due to elevated concentrations of nickel and mercury attributable to discharges from historical mercury mines, including the Corona Mine.

In 1994, John S. Livermore acquired certain parcels of property on which the Corona Mine is located, and in 1998 he acquired the remainder of the Corona Mine property, including the parcel on which the Corona Mine Adit is located. In August 2012, at the age of 94, John S. Livermore, created Corona/Twin Peaks Historical Association, LLC ("CTPHA"), a California

limited liability company, and designated John S. Livermore, Trustee of the John S. Livermore 2012 Revocable Trust, as its managing member. On or about September 18, 2012, John S. Livermore, Trustee of the John S. Livermore 2012 Revocable Trust, transferred title to the Corona Mine properties, including the parcel on which the Corona Mine Adit is located, to CTPHA. JCVLC is informed and believes, and on that basis alleges, that CTPHA was created, and the real property on which the Corona Mine Adit is located was transferred to CTPHA, for the improper purpose of seeking to avoid the environmental liabilities of John S. Livermore's estate and heirs for the discharges of acid mine drainage from the Corona Mine Adit, the resulting water pollution adversely impacting Kidd Creek, James Creek, and downstream property owners, and the Clean Water Act violations described herein.

John S. Livermore passed away on February 7, 2013. JCVLC does not know the identities of the current members of CTPHA, but alleges, on information and belief, that Samuel M. Livermore is CTPHA's current managing member, and further alleges that Mr. Livermore and Audrey K. Scott, CTPHA's registered agent for service of process, know and have records documenting the identities of all current members of CTPHA.

Clean Water Act Violations

The Clean Water Act prohibits the discharge of any pollutant from a point source to navigable waters except pursuant to and in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit governing the quality and quantity of the discharge. 33 U.S.C. §§ 1311(a), 1342(a). The Corona Mine Adit, which was created by miners to drain water from the upper Corona Mine directly into Kidd Creek, is a "point source" as that term is defined at 33 U.S.C. § 1362(14). In addition, the pipe or pipes that have been installed to convey acid mine drainage from the Corona Mine Adit approximately 15 to 20 feet to the banks of Kidd Creek are point sources under 33 U.S.C. § 1362(14). The acid mine drainage from the Corona Mine Adit contains pollutants, as the term "pollutant" is defined at 33 U.S.C. § 1362(6), and the discharge from the Corona Mine Adit to Kidd Creek constitutes a "discharge of a pollutant" as that term is defined at 33 U.S.C. § 1362(12). Kidd Creek is a navigable water, as the term "navigable waters" is defined at 33 U.S.C. § 1362(7) (*i.e.*, a water of the United States).

In California, NPDES permits are issued by the California Regional Water Quality Control Boards, and discharges to the waters of Kidd Creek are under the permitting jurisdiction of the California Central Valley Regional Water Quality Control Board ("Regional Board"). CTPHA has neither applied for nor obtained an NPDES permit for the ongoing untreated discharges of acid mine discharges from the Corona Mine Adit to Kidd Creek.

The Corona Mine Adit has been discharging acid mine drainage to Kidd Creek every day, 365 days a year, for many decades, including every day since John S. Livermore acquired the property on which the Corona Mine Adit is located in 1998, and every day since John S. Livermore transferred title to the property to CTPHA on September 18, 2012. Every day that the Corona Mine Adit has discharged acid mine drainage to Kidd Creek, and continues to discharge acid mine drainage, without an NPDES permit issued by the Regional Board constitutes a

separate and distinct violation of the Sections 301(a) and 342(a) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342(a). Thus, CTPHA has been violating the Act every day since John S. Livermore transferred the property on which the Corona Mine Adit is located to CTPHA on September 18, 2012, and CTPHA will continue to violate the Clean Water Act every day by continuing to discharge acid mine drainage to Kidd Creek without an NPDES until CTPHA is enjoined by a court from doing so.

The Clean Water Act requires states to adopt water quality standards that “consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses.” 33 U.S.C. § 1313(c)(2)(A). All point sources of discharge of pollutants, including CTPHA’s discharge from the Corona Mine Adit, are required to comply with effluent limitations necessary to meet applicable state water quality standards. 33 U.S.C. §§ 1311 (a), 1311(b)(1)(C), 1311(e).

In California, water quality standards consist of both beneficial uses and the water quality objectives based on those uses. The Regional Board has designated beneficial uses of all waters within its region, and has established water quality objectives for the reasonable protection of those beneficial uses in its Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basin (“Basin Plan”).

The beneficial uses of Kidd Creek and James Creek include, but are not limited to, municipal supply (*i.e.*, drinking water), contact recreation, warm freshwater habitat, and wildlife habitat. The discharge of untreated acid mine drainage from the Corona Mine Adit is impairing each and every one of these beneficial uses of Kidd Creek and James Creek every day.

The analysis of water samples collected from the Corona Mine Adit and Kidd Creek by the Regional Board demonstrate that the discharges of acid mine drainage from the Corona Drainage contains pollutants in concentrations that exceed applicable Basin Plan water quality objectives for certain heavy metals, including but perhaps not limited to, nickel, iron, chromium, and zinc. In addition, JVCLC is informed and believes that mercury present in the discharge from the Corona Mine Adit is converted by anaerobic organisms in Kidd Creek, or by other processes, to methyl mercury which is toxic to and bioaccumulates in fish, wildlife, and humans. Furthermore, JVCLC is informed and believes that that acid mine drainage from the Corona Mine Adit violates the Basin Plan water quality objective for pH, which provides that “pH shall not be depressed below 6.5.”

The discharge from the Corona Mine Adit also violates a number of narrative water quality objectives established in the Basin Plan including, but perhaps not limited to, the objectives for: (1) color, which provides that “[w]ater shall be free of coloration that causes nuisance or adversely affects beneficial uses;” (2) toxicity, which provides that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life;” (3) settleable matter, which provides that “[w]ater shall not contain substances in concentrations that result in the deposition of material that causes nuisance or adversely affects beneficial uses;” and (4) suspended material, which

provides that “[w]ater shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”

The Corona Mine Adit has been discharging acid mine drainage to Kidd Creek without complying with effluent limitations necessary to meet Basin Plan water quality objectives, and to protect the beneficial uses of Kidd Creek and James Creek, every day, 365 days a year, for many decades, including every day since John S. Livermore acquired the property on which the Corona Mine Adit is located in 1998, and every day since John S. Livermore transferred title to the property to CTPHA on September 18, 2012. Every day that the Corona Mine Adit has discharged acid mine drainage to Kidd Creek, and continues to discharge acid mine drainage, without meeting an applicable Basin water quality objective constitutes a separate and distinct violation of the Sections 301(a), 301(b)(1)(C) and 301(e) of the Clean Water Act, 33 U.S.C. §§ 1311 (a), 1311(b)(1)(C), 1311(e).

Moreover, daily dischargers from the Corona Mine Adit that simultaneously violate multiple Basis Plan water quality objectives constitute multiple violations of the Clean Water Act. Thus, CTPHA has been violating the Act with respect to multiple water quality objectives every day since John S. Livermore transferred the property on which the Corona Mine Adit is located to CTPHA on September 18, 2012, and CTPHA will continue to violate the Act with respect to multiple Basis Plan water quality objectives every day by continuing to discharge acid mine drainage to Kidd Creek without complying with effluent limitations necessary to met all applicable Basin Plan water quality objectives, until CTPHA is enjoined by a court from doing so.

Persons Responsible for Violations

The persons responsible for the Clean Water Act violations described above are Corona/Twin Peaks Historical Association, LLC and its former and current members. As noted above, the identities of CTPHA’s current members are unknown to JCVLC, but JCVLC alleges, on information and belief, that Samuel M. Livermore is CTPHA’s current managing member, and further alleges that Mr. Livermore and Audrey K. Scott, CTPHA’s registered agent for service of process, know and have records documenting the identities of all current members of CTPHA.

If additional persons are subsequently identified as also being responsible for the Clean Water Act violations described above, JCVLC hereby puts CTPHA, Mr. Livermore, and Ms. Scott on notice that JCVLC intends to include those persons in this action.

Name and Address of Noticing Parties and Their Counsel

This notice is provided by, and on behalf of, James Creek Valley Land Company, LLC and Peggy Dickson. JCVLC’s and Ms. Dickson’s’ business address and phone number are: James Creek Valley Land Company, LLC, 2350 Kerner Boulevard, Suite 360, San Rafael, California 94901; (415)461-2922.

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JCVLC and Ms. Dickson are represented by this law firm and any communication, whether written, oral, electronic, or otherwise regarding this notice should be directed to the attention of the undersigned at: Barg Coffin Lewis & Trapp, LLC, 350 California Street, 22nd Floor, San Francisco, California, 94104; (415) 228-5400; maz@bcltlaw.com.

Notice of Intent to File Clean Water Act Citizen Suit

NOTICE IS HEREBY GIVEN, pursuant to 33 U.S.C. § 1365(c), that if the United States Environmental Protection Agency or the State of California fail to take necessary and appropriate action within sixty (60) days of the date of this notice against the persons who are responsible for the Clean Water Act violations that are the subject of this notice, JCVLC and Peggy Dickson will commence a civil action on their own behalf against such persons pursuant to 33 U.S.C. § 1365(a)(1). JCVLC and Ms. Dickson will seek a judgment enjoining the responsible parties to cease unpermitted and untreated discharges of acid mine drainage from the Corona Mine Adit to Kidd Creek, to treat the acid mine drainage to ensure that the discharge complies with effluent limitations necessary to meet all applicable Basin Plan water quality objectives, and to pay appropriate civil penalties under 33 U.S.C. § 1319(d). JCVLC and Ms. Dickson will also seek recovery of all costs of litigation, including reasonable attorneys' and expert witness fees, as well as costs of said suit, pursuant to 33 U.S.C. § 1365(d).

As noted above, this law firm represents JCVLC and Ms. Dickson. Please contact me if you have any questions concerning this notice.

Very truly yours,


Marc A. Zeppetello

MAZ/fmc

cc Eric H. Holder, Jr., Attorney General of the United States
(by certified mail – return receipt requested)
Victor Izzo, Central Valley Regional Board
(by United States mail)

EXHIBIT A

KIDD CREEK, Napa County, California

*Photograph taken immediately downstream
from the Corona Mine Adit discharge on March 2, 2013*

